

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO - WESTERN DIVISION**

GERALD CASH, <i>et al.</i>	:	Case No. C-1-01-753
	:	
Plaintiffs,	:	(Honorable Sandra S. Beckwith)
	:	
v.	:	DEFENDANTS' MOTION TO DISMISS
	:	THE CLAIMS OF GERALD AND CLARA
HAMILTON COUNTY DEPT. OF ADULT	:	CASH PURSUANT TO CIV.R. 25
PROBATION, <i>et al.</i>	:	
	:	
Defendants	:	

The Defendants hereby move to dismiss all claims of Gerald Cash and Clara Cash under F.R.C.P. 25 for failing to substitute a proper party.

Respectfully submitted,

JOSEPH T. DETERS  
PROSECUTING ATTORNEY  
HAMILTON COUNTY, OHIO

*by: /s/ David T. Stevenson*

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**MEMORANDUM**

On November 5, 2003, a suggestion of death as to Gerald and Clara Cash was filed by plaintiffs in this action and served upon defendants. A copy of the notice is being filed as an exhibit to this motion. Federal Rule of Civil Procedure 25 provides in pertinent part:

**Rule 25. Substitution of Parties**

**(a) Death.**

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

Over two and one-half years have passed since the suggestion of death was filed by plaintiffs. No motion has been tendered on behalf of Gerald Cash or Clara Cash to substitute their successors or representatives. Dismissal of the claims of Gerald Cash and Clara Cash is therefore appropriate. *Russell v. City of Milwaukee Employees' Retirement System Annuity and Pension Bd.*, 338 F.3d 662 (7<sup>th</sup> Cir. 2003).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed on the 14<sup>th</sup> day of July through the electronic filing system of the United States District Court for the Southern District of Ohio, which will cause service to be made upon:

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